

STATE OF TENNESSEE

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Opinion No. 04-048

Insurance Premiums for County Gas Utility Commissioners — Variation in Premium Amounts Paid

QUESTION

When a county pays the health insurance premiums for gas utility commissioners, may it pay different dollar amounts for different individuals?

OPINION

Assuming the county treats similarly situated individuals in the same manner,¹ the county could pay gas utility commissioners varying amounts for health insurance coverage, depending on the county's health insurance contract(s), the type of coverage selected by the individual official ("single" or "family") and whether the commissioner is in the county plan or in a separate plan.

ANALYSIS

In your request, you stated that the county pays local gas utility commissioners' health insurance premiums as a part of their compensation. You mentioned that there appears to be a broad range in the premiums paid. The county pays one commissioner \$285 for his insurance and pays another \$723. We assume that the county does not directly pay the individual commissioner but instead pays his or her health premium. Under Tenn. Code Ann. § 7-82-308, county utility board members serve without compensation. The same statute permits counties to pay gas commissioners' health insurance premiums. Tenn. Code Ann. § 7-82-308(a)(1) states in pertinent part as follows:

The members of the board shall serve without compensation for their services, except that by resolution duly adopted by the board of commissioners, each commissioner may receive per diem payments for [amount and qualifying circumstances]. . . . **In addition, group medical insurance coverage and group life insurance coverage as**

¹See Tenn. Code Ann. § 7-82-308(a)(1); Op. Tenn. Att'y Gen. 01-110 (July 6, 2001) (citing *Hartford Steam Boiler Inspection and Ins. Co. v. Harrison*, 301 U.S. 459, 57 S.Ct. 83 (1937) for the proposition that the right of constitutional equal protection of the law guarantees that all persons similarly situated will be treated the same).

may be provided other employees, or payment of premiums for an equivalent or similar group medical coverage and group life insurance coverage which a commissioner may be participating in on April 18, 1985, or which a commissioner may have been participating in on May 25, 1984, or a group plan entered into subsequent thereto; provided, that such payment of such medical coverage and group life insurance coverage does not exceed the per person cost of the district's group medical insurance coverage and group life insurance coverage for its employees; (Emphasis added).

Your concern is whether the county has the authority to pay differing health insurance premium amounts for different commissioners.

Under Tenn. Code Ann. §§ 8-27-401, *et seq.*, counties may provide group health insurance for “county employees.” Tenn. Code Ann. § 8-27-401(a). Under Tenn. Code Ann. §§ 8-27-501, *et seq.*, counties may provide group health insurance for “all county employees and officials.” Tenn. Code Ann. § 8-27-501(a). For this opinion, we assume that the county has proceeded under the latter statute and that the term “officials” includes gas commissioners. Under these statutes, a county legislative body, its appointed subcommittee or the county executive prepares and presents for approval a proposed contract of health insurance. Tenn. Code Ann. §§ 8-27-403(a) and 8-27-502(a) and (b). For an insurance plan to be effective, the county legislative body must approve the contract by a majority vote. Tenn. Code Ann. § 8-27-502(b). Whatever health insurance policy or policies the county legislative body approves, the policy or policies must conform to the state’s standards on the provisions included in group health insurance policies. Tenn. Code Ann. § 8-27-502(d); *see also* Tenn. Code Ann. §§ 56-7-101, *et seq.* Thus, the county operates under, and abides by, the provisions of a specific insurance contract. The contract will stipulate who is eligible for the coverage and what type of coverage is offered.

If a commissioner has opted to be in the county plan, then the best resource to answer your question is the county’s health insurance contract,² the provisions of which should define who is eligible for coverage and should spell out the types of health insurance coverage available and their costs. If a commissioner has chosen group health insurance separate from the county plan, the county may still pay the premium, provided that the premium amount does not exceed the per person cost of the district’s group medical insurance coverage and group life insurance coverage for its employees. Tenn. Code Ann. § 7-82-308(a)(1). Thus, one reason premium amounts might differ is that a commissioner may be in a plan other than the county plan.

Premium amounts might also differ, even within the same plan, depending on the coverage selected. Because we do not know the provisions of the county’s insurance plan, we use the Local

²There can be more than one contract. Tenn. Code Ann. § 8-27-502(b). For convenience, we use the term “contract” to include “contracts.”

Government Plan Document (LGPD)³ to illustrate another way that premium amounts may differ. The LGPD is available to counties and is the insurance plan approved by the local government insurance committee. Tenn. Code Ann. § 8-27-207. If a county opts for this coverage, it follows the provisions of the LGPD.⁴

The LGPD offers two types of health insurance coverage: “employee only” (single) and “family.” *See* LGPD, ¶ 1.07. The premium amounts are not the same for the two types of insurance. *See* LGPD chart, “Local Government Plan Active Employee Monthly Health Insurance Premiums (Rates Effective 1/1/2004) (copy attached). An employee may accept or reject the coverage offered by the county. Tenn. Code Ann. § 8-27-503. If the employee accepts the coverage, he or she then selects single or family coverage. LGPD, ¶ 2.03. Under the LGPD, all eligible insureds similarly situated pay the same premium, depending upon what type of coverage and plan they choose (*e.g.*, PPO, POS, HMO).

Thus, we know of two bases for the county to pay differing premium amounts for persons similarly situated: choice of coverage (single, family) and choice of insurance outside the county plan. In the latter situation, however, the premium amount may not exceed the amount paid for a district employee similarly situated (*e.g.*, on “family” coverage).

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³The LGPD is at <http://www.state.tn.us/finance/ins> (Publications and Forms).

⁴ We recognize that gas utility commissioners are not eligible for coverage under this plan. LGPD, ¶ 1.16. Because the LGPD is, however, approved as a standard plan, it is useful for illustrative purposes.